

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

24-CV-38

\$180,000 UNITED STATES CURRENCY,

Defendant *in rem*.

VERIFIED COMPLAINT FOR FORFEITURE

The United States of America, by its attorneys, Trini E. Ross, United States Attorney for the Western District of New York, and Elizabeth M. Palma, Assistant United States Attorney, of counsel, for its Verified Complaint herein alleges as follows:

CAUSE OF ACTION

1. This is an action *in rem* pursuant to Title 21, United States Code, Section 881(a)(6) for the forfeiture of the sum of \$180,000.00 in United States currency (hereinafter “the defendant currency”), which was seized from Erbey Hernandez-Elizondo (also referred to as hereinafter “Elizondo”) on or about October 26, 2022 in Tonawanda, New York.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this action commenced by the United States pursuant to Title 28, United States Code, Section 1345 and over an action for forfeiture pursuant to Title 28, United States Code, Section 1355(a). This Court has *in rem* jurisdiction pursuant to Title 28, United States Code, Sections 1355(b) because the acts or

omissions giving rise to the forfeiture occurred in the Western District of New York. Venue is properly premised in the Western District of New York pursuant to Title 28, United States Code, Section 1395, because the defendant currency is currently in the custody of the United States Marshals Service for the Western District of New York.

FACTUAL ALLEGATIONS

3. At approximately 3:47 p.m., a New York State Trooper initiated a traffic stop on a black 2021 Dodge Ram, with Texas temporary registration 1510D22 (hereinafter the “vehicle”) after observing violations of the New York State Vehicle and Traffic Law as the vehicle traveled eastbound on Interstate 290 in the Town of Tonawanda, New York.

4. During the traffic stop, the operator of the vehicle provided law enforcement with a Texas driver’s license which identified the driver as Elizondo. Also in the vehicle was Elizondo’s daughter.

5. Elizondo told law enforcement that he and his daughter were in the area visiting Niagara Falls and further stated that he had a large amount of money in the vehicle.

6. Law enforcement requested to search the vehicle, and Elizondo consented.

7. During the search of the vehicle, law enforcement located a white plastic bag holding a brown paper bag filled with United States currency bundled and held together by rubber bands, on the floor of the front seat passenger compartment in front of where Elizondo’s daughter was seated.

8. Law enforcement also located a black satchel on the backseat of the vehicle holding two brown paper bags that contained bundles of United States currency, held together by rubber bands.

9. A United States Border Patrol Special Agent who is a certified narcotics K-9 handler and his drug detection dog “Shanti,” a certified narcotics canine who receives 16 hours of training per month, arrived on the scene. “Shanti” is capable of detecting odors of marijuana, cocaine, methamphetamine, heroin, ecstasy and their derivatives.

10. During a search of the vehicle, “Shanti” positively alerted to the odor of controlled substances near the driver’s door.

11. Thereafter, the search of the vehicle was halted and the vehicle was towed to NYSP Troop - T, State Police Buffalo barracks for further investigation. Both Elizondo and his daughter were transported to State Police Buffalo by law enforcement.

12. At approximately 4:55 p.m., Elizondo was read his *Miranda* rights and privileges in Spanish by law enforcement. Elizondo acknowledged his *Miranda* rights and privileges and agreed to answer questions.

13. During the interview, Elizondo stated the following, in sum and substance:

- a. He and his daughter drove from San Antonio, Texas to Niagara Falls, New York to visit Niagara Falls.

- b. He was in Niagara Falls on one previous occasion in January 2022 but the weather was not conducive to view Niagara Falls at that time. He decided to return to see the Falls.
- c. He claimed that the money located in the vehicle totaled \$180,000.
- d. He stated that his mother passed away on October 16, 2022 and that the money was the profit from the sale of a home in Mexico.
- e. He stated that he has no bill or sale or any paperwork related to the currency and as a result, he cannot deposit the money into a bank.
- f. He keeps the money with him at all times because he is in fear that if he leaves it unattended at his residence, he will be robbed.

14. Law enforcement officers obtained a New York state search warrant which authorized the search of the vehicle.

15. Law enforcement removed the defendant currency from the vehicle, and placed it in an area of the garage away from the vehicle near several storage boxes. “Shanti” performed a sniff of the area where “Shanti” alerted and indicated to the defendant currency hidden behind a box.

16. The denominations of the defendant currency were:

Denomination	Number of Bills	Value of Bills
\$100	467	\$46,700
\$50	561	\$28,050
\$20	5,217	\$104,340
\$10	76	\$760
\$5	30	\$150

17. Law enforcement provided Elizondo with a property receipt of the seizure of the defendant currency and returned the vehicle to Elizondo.

INITIATION OF CIVIL JUDICIAL ACTION

18. On or about January 27, 2023, the DEA received a claim from Erbey Hernandez-Elizondo, through his attorney, Fabian Guerrero, Esq., which halted the administrative forfeiture proceedings against the defendant currency and referred the case for judicial forfeiture proceedings.

CONCLUSION AND REQUEST FOR RELIEF

19. Based on all of the foregoing facts, the circumstances surrounding those facts, and the experience and training of the law enforcement officers involved, there is reasonable belief that the defendant currency was furnished, or intended to be furnished, in the furtherance of controlled substances distribution, and/or constitute proceeds traceable to controlled substances distribution and are subject to forfeiture pursuant to Title 21, United States Code, Section 881(a)(6).

WHEREFORE, the United States of America respectfully requests:

- (1) that an arrest warrant *in rem* be issued for the arrest of the defendant currency;
- (2) that all persons having any interest therein be cited to appear herein and show cause why the forfeiture should not be decreed;
- (3) that a judgment be entered declaring the defendant currency be condemned and forfeited to the United States of America for disposition in accordance with the law;

- (4) that the costs of this suit be paid to and recovered by the United States of America; and
- (5) that the Court grant such order and further relief as deemed just and proper.

Date: January 9, 2024
Buffalo, New York.

TRINI E. ROSS
United States Attorney
Western District of New York

/s/ *Elizabeth M. Palma*

By: ELIZABETH M. PALMA
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STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

SEBORN POWELL, being duly sworn, deposes and says:

I am a Special Agent with the Drug Enforcement Administration (“DEA”) Buffalo, New York District Office, and I am familiar with the facts and circumstances surrounding the seizure of the \$180,000.00 in United States currency seized from Erbey Hernandez-Elizondo, on or about October 26, 2022. The facts alleged in the Verified Complaint *in rem* are true to the best of my knowledge and belief and based upon my personal knowledge and information furnished to me by officers and agents of the DEA, New York State Police and U.S. Border Patrol, and provided to officials of the United States Department of Justice.

s/ Seborn Powell
SEBORN POWELL
Special Agent
Drug Enforcement Administration

Subscribed and sworn to before me
this 9 day of January 2024

s/ Levi Bourdette
LEVI BOURDETTE
Notary Public, State of New York
Qualified in Erie County
Reg. No. 01BO6405746
My Commission Expires 3-16-2024